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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/892,681	06/27/2001	Michael D. Rosenzweig	INTL-0597-US (P11773)	3968
7590 07/14/2005			EXAMINER	
Timothy N. Trop TROP, PRUNER & HU, P.C. STE 100 8554 KATY FWY HOUSTON, TX 77024-1805			DEANE JR, WILLIAM J	
			ART UNIT	PAPER NUMBER
			2642	
DATE MAILED: 07/14/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No. .

09/892,681

Applicant(s)

ROSENZWEIG, MICHAEL D.

Examiner

William J. Deane

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1 – 18 and 26 - 30 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Application No. 2002/0141599 (Trajkovic et al.).

With respect to claims 1, 4 - 5, 8 - 9, 13 – 16, 18, 26 - 27, note that Trajkovic et al. teach a portable device comprising a sensor (150), a control unit (200), the control unit receiving a first signal from a storage unit (215), a second signal based on at least a portion of an undesirable signal (Abstract), combine the first and second signal (see elements 430 and 530) and providing the combined signal through a speaker (note Fig. 1, elements 110-1 and 110-2).

With respect to claims 2 – 3, 10 – 11, 17 and 28 - 29 note paragraph 0005.

With respect to claim 6, note Fig. 2,

With respect to claim 7, note selective noise suppression unit of Fig. 3 and Fig.5 including filter 515.

With respect to claims 12, note Summary of the Invention and Fig. 3.

With respect to claim 30, note Fig.1.

Claims 19 - 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application No. 2002/0013784 (Swanson) in view of U.S. Patent Application No. 2004/0057131 (Hutzel et al.).

With respect to claim 1 - 6, 8 - 11, 13 - 20, 22 - 24, 27 - 30, note that Swanson teaches a portable device comprising sensor to sense an audio signal and a control unit both inherent in 3G phone 64. The storage unit could be in the users PC or at the service provider (Paragraphs 0024 and 0028). Therefore, Swanson teaches the claimed device except for the noise reduction aspect of the invention. However, Hutzel et al. teach that such is old in the art (see Paragraph 0082 & 0083 of Hutzel). It would have been obvious to one of ordinary skill in the art to have incorporated such a noise reduction means as taught by Hutzel et al. into the device of Swanson to have a higher quality sound. In addition, note headset 66 and microphone 72 in Hutzel et al. Note use in both references of an analog to digital converter (Paragraphs 0082 of Hutzel et al. and 0035 of Swanson). With respect to a transceiver, note Paragraph 0044 - of Hutzel et al. and Paragraph 0081 Of Swanson et al.

With respect to claim 21, note Paragraph 0042 of Hutzel et al.

Response to Arguments

Applicant's arguments with respect to claims 1 - 18 and 26 - 30 have been considered but are moot in view of the new ground(s) of rejection.

With respect to claims 19 - 25, in response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness

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can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, note the rejection above.

In response to applicant's argument of nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, both references are in the field of applicant's endeavor.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Conclusion


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: See the Abstracts and Summary of the Invention of the references cited on 892.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bill Deane whose telephone number is (571) 272-7484. In addition, facsimile transmissions should be directed to Bill Deane at facsimile number (703) 872-9314.

11 July 05


WILLIAM J. DEANE, JR.
PRIMARY EXAMINER